

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Upon the Petition of

KAREN CONE,

Petitioner,

And concerning

DOYLE MICHAEL CONE,

Respondent.

Case No. CD 69630

ORDER

FILED
POLK COUNTY, IA.
2008 JAN 17 AM 8:10
CLERK DISTRICT COURT

The parties and counsel appeared for trial on November 27-28, 2007. The Court listened carefully to the evidence in this case, and the Court observed the demeanor of the parties and witnesses; reviewed the exhibits; and read the depositions.

The Court took judicial notice of the entire court file and of Iowa Courts Online records and the Polk County Assessor's home page and any relevant information that might be contained on that home page.

The Court **FINDS** as follows:

In this case, as in the vast majority of cases where custody is at issue, the children involved need both parents. It's clear that these children are bonded with both parents.

It is a very sad situation for the children when the animosity and lack of communication has risen to the level that it has with these children. The best thing that these parents can do for the children is to both resolve that they are going to live with the situation, that they are going to do the best by the children, and that they are going to cooperate as much as they possibly can and respect each other's parenting. Regardless of where the children live, that is really the most important thing that the parents could do to benefit them in the future. The parties really need to work towards healing and working through the hurt, the anger, all of the feelings that they have had that have built up and become exaggerated, to some degree, by this court case.

Iowa law outlines the factors that the Court must take into account in determining custody of children. Those factors are outlined in Iowa Code Chapter 598, specifically 598.41. The Court has taken into account all of those factors, and the Court highlights a few factors.

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These children do have special needs because of their hearing losses. They do have special educational needs that result from that hearing loss.

The Court has listened to the recommendations of three professionals who have vast experience in dealing with children. The Court has heard the testimony of the principal of their school and has read the depositions of two teachers.

It's clear that these children's educational and special needs can be met in either home, either the home of their mother or the home of their father. Both parents have paid attention to those special needs and their educational needs. The parents are to be commended for this.

The Court has considered the, up to this point, inability of the parents to provide effective communication and supporting of the other parent's parenting. The Court has considered the experience that the parties have had in acting as joint parents, having joint legal custody of the children. The Court has considered the issues that have arisen with regard to religion, with regard to the exchanges during visitation, and the general cooperation, and the Court certainly hopes that some of these experiences will not be repeated.

Whenever there are joint legal custodians of children who don't really live that close to each other and who have different backgrounds and different thoughts, there are going to be issues that arise with regard to the children that even after a full discussion by both parents, there is still disagreement. The Court believes that is what happened with regard to having the children baptized.

Expert testimony explained the benefits to the children of having some organized religion in order to help them deal with the death of their brother and to put some other life issues in perspective. The baptism was done against the mother's wishes, but overall, it appears to have been a positive thing for the children.

Hopefully, Petitioner can support in some way the children's participation in organized religion, whether it is supporting the children in their participation in the Catholic church in the Quad Cities or by introducing them to some other religious program of her choice.

The Court has considered the geographic proximity, or lack thereof, and the difficulties that that has caused in this joint-parenting plan. It's certainly difficult to exchange children when the parties live three-and-a-half hours away. There are bound to be issues that come up with regard to transportation. If the parties lived closer

together, there would be at least a subtraction of one source of friction in terms of transfers of the children.

The Court has considered the stability of the parties, as evidenced by the testimony and the exhibits that have been introduced.

Petitioner has lived in a number of places since the separation. She lived in California. She lived in a house in Des Moines. She lived with Ron. Ron kicked her out. She lived in an apartment. She came back with Ron. Ron kicked her out. She lived in a townhouse. She came back with Ron. At one point she appeared by all of the evidence to be moving to California. And then there is most recently the very disturbing situation where the petitioner has now moved to another house, after a 911 call alleging abuse from Ron.

There have been a lot of disruptions in the living arrangements of the mother and children since this couple separated. The Court has taken that into account in both trying to project what might happen with the children in the future, should they remain with their mother, and taking into account the effect of an additional move, should the Court transfer custody.

The Court has also taken into account the fact that the father does appear to have a stable living arrangement and that the children are familiar with his home, with the school in the Quad Cities, that they have friends, and they've been involved in activities there; they do have an extended family in the Quad Cities.

In trying to project what the future might be for these children, should they remain primarily with their mother or move with their father, the Court has also taken into account the mother's job history, which during recent years has involved at least four different jobs and perhaps more. And the Court has taken into account the father's stable job history and the testimony about an upcoming change which will require less out-of-town travel for the father.

The Court has taken into account the domestic-abuse issues that have arisen with the mother since 2004. Ms. Cone has made at least three domestic abuse allegations and has later recanted those allegations or at least admitted under oath that her allegations of abuse that she made during November 2004 and June of 2006 were not true. The Court heard the very disturbing tape recording of the 911 call made a short time ago. And the Court is, of course, disturbed by the fact that the mother would make false allegations to this Court and to the Court in California.

The Court has taken into account the credibility of the parties. The mother's testimony, even taking into account the fact that she is undoubtedly nervous and upset over this proceeding, was not credible. There were many instances where she made statements in court that were contradictory to her prior statements in her deposition. Likewise, the Court did not find the mother's friend, Ron, to be credible. He minimized and recanted and said he was lying about prior statements and mysteriously now believes that the mother is great, and even in light of the fact that she very recently made a 911 call saying he was abusing her.

Because of the mother's history of instability in her home, in her work, and in her personal relationships, the Court finds it difficult to believe that she is now in a stable situation.

The Court finds that the best interests of these children would be served by a change in the primary physical custody from the home of the mother to the home of the father.

The parties shall retain joint legal custody as joint legal custodians, they must improve their communication, they must improve their cooperation, and they must respect each other as parents.

The timing of this transition has been discussed with counsel and with the Court-Appointed investigator, Mary Hilliard. Were the children to wait until the end of the semester, they would probably have to endure another move. The Petitioner might take off with the children for California. She could be involved in or reporting some instance of violence in the home. The children's best interests would not be served if they retained their current residence pending the end of the school year.

Respondent has provided evidence and testimony that there is a plan in place to change the children to his home school. There is evidence that this is a good school, a good place for the children.

The father has proposed a visitation schedule. I believe that is reasonable. The Court will adopt that and order that schedule. Should Petitioner move to the Quad Cities, she should have visitation not only every-other weekend but also a midweek visitation.

I'm ordering the parties to appear this afternoon at the office of Mary Hilliard. Petitioner shall bring the children to Ms. Hilliard's office so that the children may be told in the presence of Ms. Hilliard that they are going to be moving their primary residence to their father's home.

Throughout the proceeding on the final day of trial, the mother appeared to be ill. It would be in the best interests of the children that the children should be picked up from school by the father and brought to Mary Hilliard's office for the transfer meeting.

Petitioner shall bring personal items that she thinks the children would like to take along with them to the father's home. Even though the father has a home with rooms furnished for the children, the children are likely to have some personal items that they would like to transport with them, and the mother would know what those items might be.

The record is left open for any additional evidence or proposals that you wish to make regarding child support and/or attorney fees.

Respondent's child support obligation will terminate as of December 1, 2007.

SO ORDERED this 16th day of January, 2008.



ARTIS I. REIS, JUDGE
Fifth Judicial District of Iowa

FOR CLERK

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Original filed.

Copies to:

Daniel M. Northfield

Jean Pendleton